

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 92-0704****Sales and Use Tax****For Years 1988 through 1990**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Use Tax – Imposition of use tax on hotel supplies purchased by the taxpayer.**

Authority: Ind. Admin. Code tit. 45, r. 1-1-151 (repealed Jan. 1, 1999);
Ind. Admin. Code tit. 45, r. 2.2-5-24;
Ind. Admin. Code tit. 45, r. 2.2-5-25.

The taxpayer protests the imposition of use tax on its purchases of supplies for its hotel.

STATEMENT OF FACTS

The taxpayer is a state university located in Indiana. The taxpayer owns and operates a hotel on its campus. The taxpayer primarily rents rooms in the hotel to students, parents of students, alumni, and guests of the university. The hotel is also used for meetings involving university personnel as well as outside businesses. Additionally, the hotel is used as a learning laboratory for the taxpayer's Hospitality and Tourism Management classes. More information will be provided as needed.

I. Use Tax – Imposition of use tax on hotel supplies purchased by the taxpayer.**DISCUSSION**

The taxpayer was assessed use tax on its purchases of supplies for its hotel. The auditor found that the operation of the hotel was a proprietary activity by the taxpayer and therefore did not qualify for an exemption. Therefore, proposed assessments of use tax were made on the taxpayer's purchases of hotel supplies. As Ind. Admin. Code tit. 45, r. 2.2-5-25 instructs:

- (a) There is not a blanket exemption from the sales tax for purchases by governmental agencies and units. It provides that only the purchase of tangible personal property used by the governmental agency in connection with a governmental function may be purchased exempt from sales tax.
- (b) Purchases by a governmental agency or subdivision to be used in connection with or for a proprietary activity are subject to the sales tax.
- (c) Proprietary activities by governmental agencies and subdivisions include:
 - ...
- (2) Activities in connection with the rental of tangible personal property made to the general public.
- (d) In every case in which a governmental agency engages in a proprietary type activity as defined above, the agency must pay sales tax on the purchase of all tangible personal property used in connection therewith.

“‘Private and proprietary activities’ are those customarily considered as being competitive with private enterprise.” Ind. Admin. Code tit. 45, r. 1-1-151 (repealed Jan. 1, 1999).

While the hotel does occasionally let rooms to the general public, the taxpayer argues that the operation of the hotel is not a proprietary activity and is, instead, performance of a governmental function and therefore exempt. The taxpayer has submitted evidence indicating that the hotel was used more than 80% of the time for the performance of the taxpayer’s governmental function (e.g. accommodations for alumni, students, corporate recruiters, and campus visitors; holding conferences; and conducting university classes). The Administrative Code provides that purchases of tangible personal property by an agency or instrumentality of the state is exempt from the retail sales tax if the property is predominantly used, i.e. more than 50% of the time, in the performance of governmental functions. Ind. Admin. Code tit. 45, r. 2.2-5-24. Since the hotel supplies purchased by the taxpayer were predominantly used in the performance of governmental functions, these purchases qualify for a 100% exemption.

FINDING

The taxpayer's protest is sustained.